

**CONTINGENT LOAN AGREEMENT**

**by and between**

**THE CITY OF EDMONDS**

**and**

**THE EDMONDS PUBLIC FACILITIES DISTRICT**

**relating to the**

**EDMONDS PUBLIC FACILITIES DISTRICT**

**\$3,500,000**

**GENERAL AND REVENUE OBLIGATION BONDS,  
SERIES 2008**

**Dated as of January 22, 2008**

*This document prepared by:  
Foster Pepper PLLC  
1111 Third Avenue, Suite 3400  
Seattle, Washington 98101  
(206) 447-4400*

## TABLE OF CONTENTS

<b>ARTICLE 1. Recitals .....</b>	<b>1</b>
<b>ARTICLE 2. Definitions .....</b>	<b>2</b>
<b>ARTICLE 3. Loans to the District; Repayment Terms .....</b>	<b>2</b>
<u>Section 3.1</u> Loans to the District.....	2
<u>Section 3.2</u> Procedures Under Guarantee; Time and Amount of Loans .....	3
<u>Section 3.3</u> Covenants Regarding Debt Limit and Additional Debt. ....	4
<u>Section 3.4</u> Repayment Terms. ....	5
<u>Section 3.5</u> Nature of District's Obligation .....	5
<u>Section 3.6</u> Nature of City's Obligation .....	6
<u>Section 3.7</u> City Acknowledgments.....	6
<b>ARTICLE 4. Rights of City Upon Making Loans .....</b>	<b>6</b>
<u>Section 4.1</u> Rights of the City.....	6
<b>ARTICLE 5. Additional Obligations and Covenants.....</b>	<b>7</b>
<u>Section 5.1</u> Agreement to Issue Bonds .....	7
<u>Section 5.2</u> Third Party Beneficiary .....	7
<u>Section 5.3</u> Representations and Warranties of the District.....	7
<u>Section 5.4</u> Additional Covenants and of the District.....	7
<b>ARTICLE 6. Remedies Upon Default.....</b>	<b>8</b>
<u>Section 6.1</u> Remedies of City on Default .....	8
<u>Section 6.2</u> Remedies of District on Default .....	9
<u>Section 6.3</u> No Remedy Exclusive .....	9
<u>Section 6.4</u> No Implied Waiver .....	9
<u>Section 6.5</u> Agreement to Pay Attorneys' Fees and Expenses .....	9
<u>Section 6.6</u> Dispute Resolution.....	9
<b>ARTICLE 7. Hold Harmless .....</b>	<b>9</b>
<b>ARTICLE 8. Miscellaneous.....</b>	<b>10</b>
<u>Section 8.1</u> Continuing Disclosure Undertaking of the City .....	10
<u>Section 8.2</u> Governing Law; Venue.....	11
<u>Section 8.3</u> Notices .....	11
<u>Section 8.4</u> Binding Effect.....	11
<u>Section 8.5</u> Severability .....	11
<u>Section 8.6</u> Amendments .....	11
<u>Section 8.7</u> Additional Debt .....	12
<u>Section 8.8</u> Waiver of Breach.....	12
<u>Section 8.9</u> No Rights Created in Third Parties.....	12
<u>Section 8.10</u> Time of Essence.....	12
<u>Section 8.11</u> Effective Date of and Termination of Agreement.....	13

**CONTINGENT LOAN AGREEMENT  
RELATING TO THE  
EDMONDS PUBLIC FACILITIES DISTRICT'S**

**\$3,500,000 GENERAL AND REVENUE OBLIGATION BONDS, SERIES 2008**

This CONTINGENT LOAN AGREEMENT (this "Agreement") is dated as of January 22, 2008, by and between THE CITY OF EDMONDS (the "City"), a code city organized under the laws of the State of Washington, the EDMONDS PUBLIC FACILITIES DISTRICT (the "District"), a municipal corporation established by the City of Edmonds and duly organized and existing under and by virtue of the laws of the state of Washington (together, the "Parties").

The City and the District enter into this Agreement solely for the purpose of providing credit support for the District's General and Revenue Obligation Bonds, 2008, issued in the principal amount of \$3,500,000 pursuant to Resolution No. \_\_\_\_ of the District adopted on [January \_\_, 2008] (the "Bond Resolution").

The Parties agree as follows:

**ARTICLE 1.**

**Recitals**

The following facts and circumstances form the background of this Agreement:

1. The District is a duly organized and legally existing municipal corporation of the State of Washington. The District and the City are authorized by applicable provisions of state law, including chapters 35.57 and 35.59 RCW, and RCW 82.14.390, to acquire, construct, own, remodel, maintain, equip, repair and operate a regional center (including multipurpose community centers and special events centers) and related parking facilities.

2. The City and the District have the authority to enter into interlocal agreements under chapters 35.57, 35.59 and 67.28 RCW for joint and cooperative action, including provisions to finance joint or cooperative undertakings, multipurpose community centers, regional centers and tourism-related facilities, and to provide for services to be provided by one government to another.

3. The District's Board of Directors (the "Board") has previously found and determined that the residents of the District and the region will benefit from the District's acquisition, construction, operation and maintenance of a performing arts center, known as the Edmonds Center for the Arts (the "Regional Center"), which will provide for meetings, conferences, community events, trade shows, and artistic, musical, theatrical or other cultural exhibitions, presentations or performances.

4. As authorized by RCW 35.57.040(1)(d) and RCW 82.14.390, the District has since 2001 imposed and collected a 0.033% sales and use tax to assist in financing the design, development, acquisition, construction, operation and management of the Regional Center,

which taxing authority will expire when the bonds issued for the construction of the Regional Center and related parking facilities are retired, but not later than 2026, which is twenty-five years after the tax was first collected.

5. The District has entered into an Interlocal Agreement (the "Interlocal Agreement") with the City, the Snohomish County Public Facilities District (the "County PFD") and Snohomish County (the "County"), dated November 4, 2002, regarding the joint development and operation of the Regional Center and pursuant to which the City, the County PFD and the County have agreed to make payments to the District to support such joint development and operation.

6. The City began construction of the Special Events Center in [July, 2007], financed with available funds of the City [and State Grant?];

7. Pursuant to RCW 35.57.030, the Board desires to issue not to exceed \$3,500,000 of its General and Revenue Obligation Bonds, Series 2008 (the "Bonds"), payable from Sales Tax Revenue and General Revenue (as described herein) for the purpose of prepaying and redeeming all outstanding amounts drawn under the District's not to exceed \$7,000,000 General and Revenue Obligation Line of Credit Note, 2005 issued to provide funds needed to complete construction of the Regional Center and other related costs and to provide interim financing upon completion (the "Prior Note"), and paying certain fees and the costs of issuance and sale of the Bonds (collectively, the "Project").

8. In connection with the Prior Note, the City, the District and Bank of America, N.A. entered into a Guarantee Agreement, dated as of October 26, 2005 (the "Prior Guarantee"), which will be released upon the refunding of the Prior Note.

9. The District has requested that the City provide, for the benefit of the holders of the Bonds, credit support to the District to permit the District to obtain financing for the Project at the lowest interest rates available.

10. The City is willing to provide credit support for the District's Bonds and has authorized the execution of a contingent loan agreement pursuant to its Ordinance No. 3676, adopted on January 15, 2008 and effective as of January 25, 2008 (the "City Authorizing Ordinance").

## **ARTICLE 2.**

### **Definitions**

Unless the context clearly requires otherwise, capitalized terms used in this Agreement have the meanings given such terms in the Bond Resolution.

## **ARTICLE 3.**

### **Loans to the District; Repayment Terms**

Section 3.1 Loans to the District. The City shall lend money to the District at the times and in the amounts set forth in Section 3.2. The District shall borrow the amounts described above from the City pursuant to this Agreement for the purpose of paying debt

service on the Bonds. The City irrevocably agrees to disburse all loans made hereunder directly to the District, and the District irrevocably agrees to immediately apply all such amounts received by it for the purpose of meeting its obligations under the Bonds. The aggregate principal amount of outstanding loans to be made by the City pursuant to this Agreement shall not exceed the outstanding principal amount of the Bonds, plus all interest accrued on the Bonds.

Section 3.2 Procedures Under Guarantee; Time and Amount of Loans.

(1) Notice of Insufficiency. On the 1<sup>st</sup> day of the month preceding each Debt Service Payment Date (or if the 1<sup>st</sup> is not a Business Day, then on the next Business Day), the District shall review the amount on deposit in the Debt Service Fund to determine whether there will be sufficient money available in the Debt Service Fund to make the required payment due on the upcoming Debt Service Payment Date. If, upon such review, it appears that the money available in the Debt Service Fund will be insufficient to make that payment, the District shall provide the City a notice in substantially the form attached hereto as Exhibit A (a "Notice of Insufficiency") within five days after the date on which the review was required. Failure of the District to give a Notice of Insufficiency to the City shall not relieve the City of its obligation to make loans upon demand by the District under subsection (4) of this section.

(2) Budgeting for Loans. Upon receipt of a Notice of Insufficiency from the District, the City shall, to the extent necessary, include in its budget the amounts required to make the loans described in subsection (4) of this section. If the need to budget for such loans was not reasonably foreseeable at the time the City prepared its biennial budget, the City shall budget for such loans under Title 35A RCW and the Edmonds Municipal Code in sufficient time to provide for the loans described in subsection (4).

(3) Cancellation Notices. If, at any time before 10 a.m. (Pacific time) on the 24<sup>th</sup> day of the month preceding an upcoming Debt Service Payment Date for which the District has given a Notice of Insufficiency (or, if the 24<sup>th</sup> is not a Business Day, the Business Day preceding the 24<sup>th</sup>), the District determines that there will be sufficient money available in the Debt Service Fund to make the required payment due on the upcoming Debt Service Payment Date, the District shall provide, prior to 5 p.m. on the same day, a notice to the City in substantially the form attached hereto as Exhibit B (a "Cancellation Notice"). Delivery of a Cancellation Notice by the District to the City shall not relieve the City of its obligations to make loans upon demand by the District under subsection (4) of this section.

(4) Loans. For as long as any Bonds remain outstanding, the City shall, no later than 10 a.m. on the business day preceding that Debt Service Payment Date, lend to the District an amount that, when added to the money available in the Debt Service Fund, is sufficient to make all make all payments of principal of and interest on the Bonds due on the upcoming Debt Service Payment Date. The City shall, upon demand by the District in accordance with Section 3.1, cause the amount of each loan hereunder to be transferred to the District in United States Dollars and immediately available funds.

(5) Method of Notice. Notices of Insufficiency and Cancellation Notices shall be sent by the District to the City Administrative Services Director by hand delivery or facsimile (which facsimile shall be promptly confirmed by telephone communication to the City

Administrative Services Director). The original of each such notice also shall be mailed to the City pursuant to Section 8.3. Any failure by the District to send such notices shall not nullify the City's obligation to make loans to the District hereunder, but may result in a delay by the City in transferring loan amounts to the District.

(6) Assumed Payment Under Interlocal Agreement. Solely for the purpose of determining whether sufficient money will be available in the Debt Service Fund on any Debt Service Payment Date, the parties may assume that the City will make payments to the District at the times, and in the amounts, required by the Interlocal Agreement, except to the extent expressly modified by this Agreement.

Section 3.3 Covenants Regarding Debt Limit and Additional Bonds.

(1) The District does not intend to submit this Agreement or any indebtedness created hereunder to qualified electors of the District for approval. Under RCW 35.57.030 and existing laws, the District may incur non-voted indebtedness in an aggregate amount equal to one-half of one percent of the value of the taxable property within the District. In light of the foregoing, and to comply with RCW 67.28.130, the District agrees not to incur additional indebtedness after the Bonds are issued unless prior written approval is obtained in accordance with Section 8.7 of this Agreement and Section 19 of the Bond Resolution.

(2) In the event the District lacks sufficient non-voted debt capacity to incur indebtedness resulting from a loan from the City in the amount determined under Section 3.2, the District shall incur indebtedness for an amount equal to the District's remaining non-voted debt capacity, if any, and any loan amount greater than the District's then-remaining non-voted debt capacity shall be deemed an equity payment by the City to the District in exchange for an interest in the Regional Center, which need not be repaid pursuant to Section 3.4. Within 60 days after any such equity payment by the City, the District shall deliver to the City a quitclaim deed conveying to the City a tenancy-in-common interest in the Regional Center. Such interest shall be a percentage ownership interest in the Regional Center, the numerator of which shall be the sum such equity payment and the costs of transferring title and recording such quitclaim deed, and the denominator of which shall be the aggregate original principal amounts of: (a) the Bonds, (b) all bonds issued by the City to finance the Regional Center, and (c) any other bonds issued by the District to finance the Regional Center (excluding the Prior Note and any bonds, or any portion thereof, issued to refinance bonds issued by the City or the District to finance the Regional Center).

(3) The City will reconvey to the District, by means of a quitclaim deed, all of the City's interest in the Regional Center acquired pursuant to subsection (2) of this Section if the District pays to the City an amount equal to the sum of:

(a) all payments made by the City to the District in exchange for an interest being reconveyed to the District; *plus*

(b) all costs incurred by the City relating to the transfer of title and recording of deed(s); *plus*

(c) interest on the sum of the amounts described by clauses (a) and (b), calculated from the date(s) of the City's payment thereof; *plus*

(d) the costs of transferring title to the District and recording such quitclaim deed.

The rate of interest to be used for purposes of this calculation shall be the rate described in Section 3.4(2).

(4) The transfers of interest authorized by this Section are intended to reflect the joint and cooperative nature of the financing of the Regional Center pursuant to chapters 35.57, 35.59 and 67.28 RCW.

#### Section 3.4    Repayment Terms.

(1) *Repayment Terms.* The principal amount of each loan to the District hereunder, together with interest thereon calculated as set forth in subsection (2) of this section, shall be repaid by the District from available Sales Tax Revenue and General Revenue during each calendar year after (a) the Debt Service Fund has been fully funded for such calendar year and (b) reasonable provision has been made for the operating expenses of the Regional Center. Such payments will be applied *first* to costs owed to the City, *second*, to interest owed to the City on account of outstanding loans made under this Agreement and *third* to the principal of all outstanding loans made under this Agreement in the order in which such loans were made.

(2) *Interest Rate.* Each loan made under the terms of this Agreement will bear interest from the date of the loan until the date such loan is repaid. Interest on the loans will be calculated on the basis of a 365/366-day year, for the actual number of days elapsed. The rate of interest borne by each loan hereunder shall be a variable rate equal to the monthly average rate of return on the State of Washington Local Government Investment Pool (or its successor), as determined as of the last day of each month in which a loan is outstanding, and shall change monthly as of the first day of each month in which a loan is outstanding. The City may in its discretion charge a lower rate of interest. Absent manifest error, all calculations of the City Administrative Services Director shall be binding upon the District.

(3) *Maturity.* Unless paid earlier pursuant to subsection (1) of this section, all loans hereunder shall mature on December 31 of the year of expiration of the District's authority to impose the Sales Tax under RCW 82.14.390, as it may be amended from time to time, but not earlier than 2026, which is the year that is twenty-five years after the tax was first collected. If any loan has not been repaid under this Agreement on the loan maturity date described in this Section 3.4(3), the City shall acquire an ownership interest in the Regional Center equal to the unpaid principal and interest due to the City on that loan maturity date, and the District shall execute and deliver a quitclaim deed and such other documents as may be necessary to convey this interest to the City as described in Section 3.3, and the District's obligation to repay the loan under this Agreement shall be discharged.

Section 3.5    Nature of District's Obligation. The District's obligation to make the loan repayments to the City from the sources identified herein and to perform and observe the other obligations on its part contained herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. The full faith, credit and resources of the District are hereby pledged for the payment of all amounts owed to the City under this Agreement. The District's obligations under this Agreement shall continue in

effect and shall survive the satisfaction of the District's obligations under the Bonds and the Bond Resolution until such time as principal and interest due to the City pursuant to any loan or loans made hereunder have been repaid, together with any costs owed to the City pursuant to Section 6.5 and Article 7. To further its ability to make such payments to the City, the District hereby irrevocably covenants and agrees to continue imposing the Sales Tax as permitted under RCW 82.14.390 for so long as the Bonds remains outstanding or any District obligation to pay any amount to the City under this Agreement remains outstanding.

**Section 3.6 Nature of City's Obligation.** The City's obligation to advance funds to the District in the amounts, at the times, under the conditions and in the manner described herein shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise. The full faith, credit and resources of the City are pledged irrevocably to make the loans, in the amounts, at the times, in the manner and subject to the limitations described herein, regardless of whether the Regional Center is operating at any particular time. The obligations of the City hereunder shall terminate upon payment in full of the principal of and interest on the Bonds. For each fiscal year during the term of this Agreement, the City agrees that it will include in its budget and appropriate an amount that the City reasonably expects to be necessary to fulfill its obligation to make loans to the District under the terms of this Agreement. Failure to so budget shall not be a default under this Agreement if the City fulfills its obligation to make loans to the District as required under this Article III.

**Section 3.7 City Acknowledgments.** The City acknowledges and agrees that the District will pledge to the payment of the Bonds: (a) the loan proceeds it receives under this Agreement; (b) the Sales Tax Revenues, junior only to the lien granted in connection with the City's Limited Tax General and Revenue Obligation Bonds, 2002; (c) the District's General Revenue; and (d) proceeds of fundraising efforts for the Project as described in [Section \_\_\_\_] of the Bond Resolution.

#### **ARTICLE 4.**

##### **Rights of City Upon Making Loans**

**Section 4.1 Rights of the City .** If the City has made any loans to the District under this Agreement and such loans have not been repaid in full (whether or not the loan is in default), the City may take any one or more of the following steps:

(1) The City may have access to and inspect, examine and make copies of the books and records and any and all accounts and data of the District; and

(2) With the consent of the parties to the Interlocal Agreement, the City may, but shall not be required to, appoint a manager (which may be the City) or a receiver for the Regional Center. Any manager or receiver appointed pursuant to this subsection (2) shall have, in addition to all the rights and powers customarily given to and exercised by receivers, all rights of the District to manage, operate and maintain the Regional Center and shall have all other rights of the District to exercise its rights and powers in the same manner and to the same extent that the District could do, including without limitation the execution, enforcement and termination of contracts providing for management or maintenance of the Regional Center, all



on such terms as are deemed best by the City to protect its interests under this Agreement. The City, or the manager or receiver appointed by the City, shall be entitled to receive a reasonable fee for managing the Regional Center. The City shall not enter into an agreement with a manager unless it receives written confirmation from nationally recognized bond counsel that the agreement will not adversely affect the tax-exempt nature of interest on the Bonds for federal income tax purposes.

## **ARTICLE 5.**

### **Additional Obligations and Covenants**

Section 5.1 Agreement to Issue Bonds. The District shall issue the Bonds in accordance with the Bond Resolution and this Agreement in the principal amount of \$3,500,000 which amount does not to exceed the amount necessary to finance or refinance the Regional Center in accordance with the Project Budget.

Section 5.2 Third Party Beneficiary. Each covenant and commitment of the District in the Bond Resolution is incorporated herein for the further benefit of the City, and the City shall be a third party beneficiary of the contract of the District set forth in the Bond Resolution.

Section 5.3 Representations and Warranties of the District.

(1) *Commencement of Construction Prior to January 1, 2004.* The District represents that it commenced construction (within the meaning of RCW 82.14.390) of the Regional Center before January 1, 2004.

(2) *Regarding the Regional Center.* The District has, and will have, as long as any Bonds or Additional Bonds remain outstanding, good right and lawful authority to proceed with the development of the Regional Center and to provide for the maintenance, operation, improvement and construction of the Regional Center. The District shall not release or modify the obligations of any user of the Regional Center that would in any way limit any such user's obligation to make payment of such rents, rates, fees or other charges imposed by the District for such use of the Regional Center. The foregoing shall not prohibit the District from establishing reduced rates and charges, or eliminating rates and charges, for the use of the Regional Center for certain classes of users of the Regional Center if and as appropriate, as long as charges are applied on a fair and nondiscriminatory basis.

Section 5.4 Additional Covenants and of the District.

(1) *Operation of Regional Center.* The District agrees that it shall cause the Regional Center to be operated and maintained in a business-like fashion (including the maintenance of proper and customary property and liability insurance with respect to the Regional Center) as both a "tourism-related facility" (within the meaning of RCW 67.28.080(7)) and a "regional center" (within the meaning of RCW 35.57.020) and shall cause all books and records to be maintained with respect thereto.

(2) *Reporting.* The District shall provide the City (at the notice address set forth in Section 8.3) with a quarterly report summarizing actual financial activity and financial expectations for the following four quarters.

(3) *No Liens.* Neither the City nor the District shall grant or permit any lien (other than consensual liens such as contractors' liens) against the Regional Center or its interest therein which, if unpaid, might become a lien or charge upon the Sales Tax Revenue, or any part thereof, prior to or superior to the lien of the Bonds and any Additional Bonds, or which might impair the security of the Bonds and any Additional Bonds.

(4) *Enforcement of Obligations.* The District shall take all reasonable measures permitted by law to enforce payment to it of all Sales Tax Revenue and any payments due to it under the Interlocal Agreement, and shall at all times, to the extent permitted by law, defend, preserve and protect the rights, benefits and privileges of the District and of the Registered Owners under or with respect to the Bond Resolution.

(5) *Ownership, Sale, Transfer or Disposition of the Regional Center.* The District shall be the owner of the Regional Center except to the extent the City acquires any interest therein pursuant to Section 3.3 of this Agreement. Except pursuant to Section 3.3, the District will not sell, transfer or otherwise dispose of any facilities or property (real or personal) comprising a part of the Regional Center, except upon approval by resolution of the Board and only consistent with one or more of the following:

(a) The District in its discretion may sell, transfer or dispose (each, as used in this subparagraph, a "transfer") of facilities or property that is not material to the operation of the Regional Center, or which has become unserviceable, inadequate, obsolete or unfit to be used in the operation of the Regional Center or is no longer necessary, material or useful to the operation of the Regional Center; or

(b) The District in its discretion may transfer facilities or property if the District receives from the transferee in a bona fide, arm's length transaction an amount equal to the fair market value of the facilities or property so transferred. As used herein, "fair market value" means the most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the willing buyer and willing seller each acting prudently and knowledgeably. The proceeds of any transfer under this subparagraph (ii) shall be used (1) to promptly redeem, or irrevocably set aside for the redemption of, the District's outstanding Bonds or Additional Bonds, and/or (2) to provide for all or part of the cost of capital improvements and/or additions to or expansions of the Regional Center.

Nothing in the foregoing is intended to restrict the transfer of the facilities or property to the City pursuant to the Interlocal Agreement or to permit transfers not permitted under the Interlocal Agreement.

## **ARTICLE 6.**

### **Remedies Upon Default**

Section 6.1 Remedies of City on Default. Upon the occurrence of a default by the District in its obligations hereunder, the City may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or

agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the City may deem most effectual to protect and enforce any of its rights or interests hereunder; provided that the City may not enforce repayment of the loans until repayment in full of the principal of and interest on the Bonds.

Section 6.2 Remedies of District on Default. Upon the occurrence of a default by the City in its obligations to make loans to the District hereunder, the District may proceed to protect and enforce its rights in equity or at law, either in mandamus or for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, as the District may deem most effectual to protect and enforce any of its rights or interests hereunder.

Section 6.3 No Remedy Exclusive. No remedy conferred upon or reserved to either party by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, and either party hereto shall be free to pursue, at the same time, each and every remedy, at law or in equity, which it may have under this Agreement, or otherwise.

Section 6.4 No Implied Waiver. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. For the exercise of any remedy, it shall not be necessary to give any notice, other than such notice as may be expressly required herein.

Section 6.5 Agreement to Pay Attorneys' Fees and Expenses. If a default arises under any of the provisions of this Agreement and either party hereto should employ attorneys or incur other expenses for the collection of amounts due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of the other party contained in this Agreement, on demand therefor, the nonprevailing party shall pay or reimburse the prevailing party for the reasonable fees of such attorneys and such other expenses so incurred.

Section 6.6 Dispute Resolution. The parties may mediate any dispute over the interpretation of any terms or conditions under this Agreement. Mediation will be made available upon request of either party. The costs associated with any such mediation shall be shared equally by the parties.

## **ARTICLE 7.**

### **Hold Harmless**

As between the City and the District, the District shall assume the risk of, be liable for, and pay all damage, loss, cost and expense of any party, including its employees, arising out of the performance of this Agreement, except that caused by negligence and/or willful misconduct solely of the City and its employees acting within the scope of their employment. The District shall hold harmless the City and its officers, elected officials, agents, and employees against all

claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments or decrees by reason of damage to any property or business and/or any death, injury or disability to or of any person or party, including any employee, arising out of or suffered, directly or indirectly, by reason of or in connection with the performance of this Agreement or any act, error or omission of the District or the District's employees, agents, or subcontractors, whether by negligence or otherwise, but only after repayment in full of the principal of and interest on the Bonds.

The District's obligation shall include, but not be limited to, investigating, adjusting and defending all claims against the City alleging loss from action, error or omission or breach of any common law, statutory or other delegated duty by the District, the District's employees, agents or subcontractors.

## **ARTICLE 8.**

### **Miscellaneous**

Section 8.1 Continuing Disclosure Undertaking of the City. To meet the conditions of paragraph (d)(2) of United States Securities and Exchange Commission ("SEC") Rule 15c2 12 (the "Rule"), as applicable to a participating underwriter for the Bonds, the City undertakes for the benefit of holders of the Bonds to provide to each NRMSIR and the SID (as those terms are defined in the Rule), the following annual financial information: (i) annual financial statements for the City prepared (except as noted in the financial statements) in accordance with generally accepted accounting principles applicable to Washington governmental units such as the City, as such principles may be changed from time to time, which statements need not be audited, except, however, that if and when audited financial statements are otherwise prepared and available to the City they will be provided; (ii) statements of authorized, issued and outstanding general obligation debt of the City; (iii) statements of assessed valuation of property within the City subject to ad valorem taxation for the fiscal year; and (iv) the ad valorem regular property tax levy rate and regular property tax levy rate limit for the fiscal year.

Such annual financial information shall be provided not later than the last day of the ninth month after the end of each fiscal year of the City (currently, a fiscal year ending December 31), as such fiscal year may be changed as required or permitted by State law, commencing with the City's fiscal year ending December 31, 2007. It may be provided in a single or multiple documents, and may be incorporated by reference to other documents that have been filed with each NRMSIR and the SID, or, if the document incorporated by reference is a "final official statement" with respect to obligations of the City, that has been filed with the MSRB.

The City's obligations under this undertaking shall terminate upon the legal defeasance of all of the Bonds. In addition, the City's obligations under this undertaking shall terminate if those provisions of the Rule which require the City to comply with this undertaking become legally inapplicable in respect of the Bonds for any reason, as confirmed by an opinion of nationally recognized bond counsel or other counsel familiar with federal securities laws delivered to the City and the District, and the District provides timely notice of such

termination to each NRMSIR or the MSRB and the SID. To the extent authorized by the SEC, the City may satisfy this undertaking by transmitting the required filings using <http://www.disclosureusa.org> (or such other centralized dissemination agent as may be approved by the SEC).

Section 8.2 Governing Law; Venue. This Agreement is governed by and shall be construed in accordance with the substantive laws of the State of Washington and shall be liberally construed so as to carry out the purposes hereof. Except as otherwise required by applicable law, any action under this Agreement shall be brought in the Superior Court of the State of Washington in and for Snohomish County.

Section 8.3 Notices. Except as otherwise provided herein, all notices, consents or other communications required hereunder shall be in writing and shall be sufficiently given if addressed and hand delivered or mailed by certified or registered mail, postage prepaid and return receipt requested, as follows:

To the City:                      City of Edmonds  
   121 Fifth Avenue North  
   Edmonds, WA 98020  
   Attention: Finance/Administrative Services Director  
   Fax: (425) 771-0265  
   Telephone: (425) 771-0240

To the District:                 Edmonds Public Facilities District  
   121 Fifth Avenue North  
   Edmonds, WA 98020  
   Attention: PFD Treasurer  
   Fax: (425) 771-0265  
   Telephone: (425) 771-0240

The City or the District may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent by giving notice of such change to the other party. Notices shall be deemed served upon deposit of such notices in the United States mail in the manner provided above.

Section 8.4 Binding Effect. This Agreement shall inure to the benefit of the City, the District and the holders of the Bonds and shall be binding upon the City and the District and their successors. This Agreement may not be assigned.

Section 8.5 Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.6 Amendments. This Agreement may be amended, changed, modified or altered by an instrument in writing duly executed by the City and the District (or the successors in title of each) if, in the opinion of bond counsel, such amendment will not adversely affect the security for the Bonds or tax exemption of interest on the Bonds. This Agreement may not be

terminated until the Bonds are no longer outstanding, unless the City has assumed all liability for payment of the principal of and interest on the Bonds when due and has pledged its full faith and credit to such payment.

Section 8.7 Additional Debt. So long as the Bonds remain outstanding and the Contingent Loan Agreement remains in effect, the District shall not incur any additional indebtedness, other than in the ordinary course of business, without the prior written consent of the City. Such consent shall not be unreasonably withheld if the following conditions are met at the time:

(a) The District is not in default under this Agreement or under the Bond Resolution;

(b) The proceeds of the additional debt will be used to fund capital expenditures relating to the Regional Center;

(c) The additional indebtedness will not cause the District to exceed its non-voted debt capacity under RCW 35.57.030(1); and

(d) No ownership interest in the Regional Center has been transferred to the City under Section 3.3(2) that has not been transferred back to the District under Section 3.3(3).

Unless specified in a separate agreement or an amendment hereto, the City shall be under no obligation to make loans hereunder to pay debt service on any additional debt.

Section 8.8 Waiver of Breach. No waiver of any breach of any covenant or agreement contained herein shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the nondefaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults that were in existence at the time such payment or payments or performance were accepted by it.

Section 8.9 No Rights Created in Third Parties. The terms of this Agreement are not intended to establish or to create any rights in any persons or entities other than the City, the District, the respective successors and assigns of each.

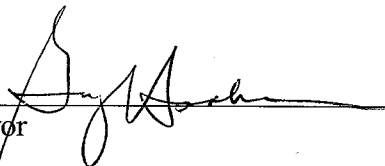
Section 8.10 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

Section 8.11 Effective Date of and Termination of Agreement. This Agreement shall take effect and shall supersede the Prior Guarantee Agreement as of the date first written above. Except as provided in Section 3.5, this Agreement shall terminate upon payment in full of all principal of and interest on the Bonds. Section 3.3 and Article 7 shall survive the termination of this Agreement.

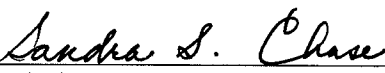
ORAL AGREEMENTS OR ORAL COMMITMENTS TO LEND MONEY, EXTEND CREDIT, OR FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

IN WITNESS WHEREOF, the City and the District have caused this Agreement to be executed in their respective names by their duly authorized officers, and have caused this Agreement to be dated as of the date set forth on the first page hereof.

CITY OF EDMONDS, WASHINGTON

  
\_\_\_\_\_  
Mayor

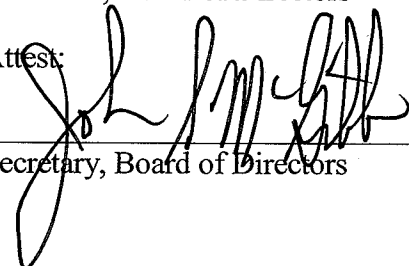
Attest:

  
\_\_\_\_\_  
City Clerk

EDMONDS PUBLIC FACILITIES  
DISTRICT

  
\_\_\_\_\_  
President, Board of Directors

Attest:

  
\_\_\_\_\_  
Secretary, Board of Directors

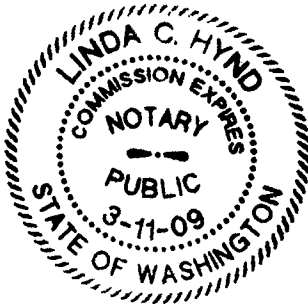
STATE OF WASHINGTON

COUNTY OF SNOHOMISH

SS.

I certify that I know or have satisfactory evidence that Gary Haakenson and Sandra S. Chase are the persons who appeared before me, and said persons acknowledged that said persons signed this instrument, on oath stated that said persons were authorized to execute the instrument and acknowledged it as the Mayor and Clerk, respectively, of the CITY OF EDMONDS, a municipal corporation of the State of Washington, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this 25<sup>th</sup> day of January, 2008.



Linda C. Hynd  
(Signature of Notary)

Linda C. Hynd  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at

Snohomish County, Washington  
My appointment expires 3-11-2009

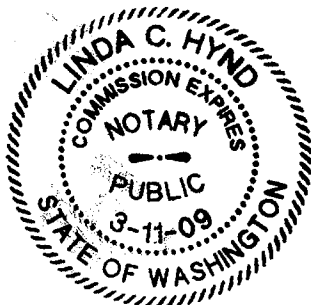
STATE OF WASHINGTON

COUNTY OF SNOHOMISH

SS.

I certify that I know or have satisfactory evidence that John McGibbon and Terry Vehrs are the persons who appeared before me, and said persons acknowledged that said persons signed this instrument, on oath stated that said persons were authorized to execute the instrument and acknowledged it as the President and Secretary, respectively, of Board of Directors of the EDMONDS PUBLIC FACILITIES DISTRICT, a municipal corporation of the State of Washington, to be the free and voluntary act of such municipal corporation for the uses and purposes mentioned in the instrument.

Dated this 25<sup>th</sup> day of January, 2008.



Linda C. Hynd  
(Signature of Notary)

Linda C. Hynd  
(Legibly Print or Stamp Name of Notary)

Notary public in and for the State of Washington, residing at

Snohomish County, Washington  
My appointment expires 3-11-2009



**Exhibit A**  
**Form Notice of Insufficiency**

City of Edmonds  
121 Fifth Avenue North  
Edmonds, WA 98020  
Attention: Finance/Administrative Services Director

VIA FACSIMILE  
(with telephone confirmation)

**Re: NOTICE OF INSUFFICIENCY**  
**Edmonds Public Facilities District**  
**General and Revenue Obligation Bonds, 2008**

The undersigned, a duly authorized officer of the Edmonds Public Facilities District (the "District"), hereby certifies to the City of Edmonds, Washington (the "City"), with reference to the Contingent Loan Agreement (the "Agreement") dated as of January [ ], 2008, by and between the City and the District, and the above-captioned bonds (the "Bonds"), that:

1. Next Debt Service Payment Date: \_\_\_\_\_, 20\_\_
2. Debt service due:

Principal	\$ _____
Interest	\$ _____
Total	\$ _____
3. There will be insufficient money available in the Debt Service Fund on the date described in clause (1) to make the debt service payments described in clause (2):

Amount expected to be on deposit in the District's Debt Service Fund:	\$ _____
Plus the payment the City is required to make on _____, 20__,	
pursuant to the Interlocal Agreement:	\$ _____
Total available for debt service	\$ _____
4. Amount of the loan requested is calculated as follows:

Debt service total listed in clause (2):	\$ _____
Less the amount available for debt service, as listed in clause (3):	\$ _____
Loan Amount	\$ _____

Pursuant to Section 3.2 of the Agreement, the City is requested to make a loan to the District no later than \_\_\_\_\_, 20\_\_, in the amount listed in clause (4). The City shall cause such amount to be transferred to the District's Debt Service Fund, in United States Dollars and immediately available funds.

Any capitalized term used herein and not defined shall have the meaning assigned to such term in the Agreement or, if not therein defined, as defined in the Bond Resolution. The individual signing below hereby represents that he or she is an officer of the undersigned and is duly authorized to execute and deliver this document.

Dated: \_\_\_\_\_, 20\_\_.

EDMONDS PUBLIC FACILITIES DISTRICT

\_\_\_\_\_  
[Executive Director or designee]

**Exhibit B**  
**Form Cancellation Notice**

City of Edmonds  
121 Fifth Avenue North  
Edmonds, WA 98020  
Attention: Finance/Administrative Services Director

VIA FACSIMILE  
(with telephone confirmation)

**Re: CANCELLATION NOTICE**  
**Edmonds Public Facilities District**  
**General and Revenue Obligation Bonds, 2008**

The undersigned, a duly authorized officer of the Edmonds Public Facilities District (the "District"), hereby certifies to the City of Edmonds, Washington (the "City"), with reference to the Contingent Loan Agreement (the "Agreement") dated January \_\_, 2008, by and between the City and the District, and the above-captioned bonds (the "Bonds"), that:

1. Next Debt Service Payment Date: \_\_\_\_\_, 20\_\_
2. Debt service due:

Principal	\$ _____
Interest	\$ _____
Total	\$ _____
3. There will be sufficient money available in the Debt Service Fund on the date described in clause (1) to make the debt service payments described in clause (2):

Amount expected to be on deposit in the District's Debt Service Fund:	\$ _____
Plus the payment the City is required to make on _____, 20__,	
pursuant to the Interlocal Agreement:	\$ _____
Total available for debt service	\$ _____
4. The District's Notice of Insufficiency and loan request delivered on \_\_\_\_\_, 20\_\_ is hereby cancelled.

Pursuant to Section 3.2 of the Agreement, the City is requested NOT to make a loan to the District with respect to the debt service payments described in clause (2).

Any capitalized term used herein and not defined shall have the meaning assigned to such term in the Agreement or, if not therein defined, as defined in the Bond Resolution. The individual signing below hereby represents that he or she is an officer of the undersigned and is duly authorized to execute and deliver this document.

Dated: \_\_\_\_\_, 20\_\_.

EDMONDS PUBLIC FACILITIES DISTRICT

\_\_\_\_\_  
[Executive Director or designee]